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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/493,087	01/28/2000	David Slik	39384	1768
23820	7590	05/19/2005		EXAMINER
				JASMIN, LYNDIA C
			ART UNIT	PAPER NUMBER
			3627	
				DATE MAILED: 05/19/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	09/493,087	SLIK, DAVID
	Examiner	Art Unit
	Lynda Jasmin	3627

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 14 February 2005.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 9-11, 18, 19 and 24-33 is/are pending in the application.
 - 4a) Of the above claim(s) 28-33 is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 9-11, 18, 19 and 24-27 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date: _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date: _____ | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. Amendment received on February 14, 2005 has been acknowledged.

Election/Restrictions

2. Newly submitted claims 28-33 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: Claims 28-33 are directed to a method of generating a broadcast signal having content stream packetized into logic blocks of different types.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 28-33 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 9-11, 24-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Freeman et al. (2001/0013123 A1). In view of Kanamori et al. (5,754,854).

Freeman et al. discloses a method of selectively substituting content into content streams for transmission to one or more users comprising the steps of: generating a broadcast data stream having a plurality of content blocks and at least one floating reference content block each of said content blocks comprising content (box [0047]), selecting content to be provided in a broadcast data stream via a floating reference content block (via data transport stream) by comparing and determining an optimal match between at least two criteria selected from the group consisting of a profile of a broadcast station from which said broadcast data stream is transmitted, a profile of an advertisement spot in said broadcast data stream corresponding to said floating reference content block, a profile of a user group comprising a plurality of said users, a profile of one of said users, a profile of said broadcast data stream, and profiles of content available for substitution into said broadcast data stream (via customized programming content transmitting to a user from a transmission center; boxes [0027] and [0033]), and creating a reference content block having at least one of selected content and a reference with which to obtain the selected content from a storage location (via a library of storage server), the selected content corresponding to the optimal match, the reference content block being used in the broadcast data stream in lieu of the floating reference content block (boxes [0027] and [0034]). Freeman further discloses the step of configuring selected the content blocks to refer to different the content blocks depending on which of the users the selected content blocks are intended for (box [0013]), and specifying metadata associated with the content blocks in the broadcast data stream to define which positions of the broadcast data stream are

intended for different types of the users, wherein the selecting step comprises the step of determining the optimal match using the metadata (box [0089]). Freeman further discloses an encoding process before transmission.

However, Freeman fails to explicitly disclose the floating reference content block being an empty block having metadata transmitting the broadcast data stream but no content.

Kanamori discloses the concept of substituting message where a resource grouping facility substitutes a reference to a proxy block for the reference to an original block in the message 250 that will be delivered to the transferee program. In step 405, the facility stores references to both the original block and the proxy block in the block group list, assigning them both the same unused group number ("1"), and thereby placing them in the same block group. The facility then returns to the message passing subsystem to direct the modified transfer message to the transferee program. Kanamori further discloses the facility substitutes a reference to the intermediate proxy block for the reference to the original block in message 751, and adds references to both the original block and the intermediate proxy block to the block group list, assigning both an unused group number ("1"). Kanamori further discloses in Figure 2, an empty memory block group lists 340 corresponding to the resource proxy group list 262.

From this teaching of Kanamori, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the data stream transmission of Freeman to include the empty memory block group list in order to store references to both an original block and a proxy block in a block group list.

5. Claims 18 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Freeman et al. in view Kanamori, as applied to claim 9 above, and further in view of Dedrick (5,724,521).

The Freeman and Kanamori combination discloses the elements of the claimed invention, but fails to explicitly disclose determining the number of users receiving the selected content; and deducting an account corresponding to each provider of the selected content. Dedrick discloses the concept of charging a fee to advertiser based on consumer scale matching process associated with an electronic advertisement. From this teaching of Dedrick, It would have been obvious to one of ordinary skill in the art at the time the invention was made to the customized programming of the combination to include charging a fee to advertiser as taught by Dedrick in order to facilitate maintenance cost for provider of electronic content.

Response to Arguments

6. Applicant's arguments with respect to claims 9-11, 18, 19, 24-27 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Hoffberg, Tan, Miller et al, are cited for disclosing empty reference content block.

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8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lynda Jasmin whose telephone number is (571) 272-6782. The examiner can normally be reached on Monday- Friday (9:30-6:00) with Increased Flex.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert P Olszewski can be reached on (571) 272-6788. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Lynda Jasmin
Primary Examiner
Art Unit 3627

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